

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

JOHN BAXLEY, JR., *ET AL.*,

Plaintiffs,

vs.

Civil Action No. 3:18-cv-01526

BETSEY JIVIDEN, *ET AL.*,

Defendants.

ORDER

On this day came the parties for a hearing concerning *Defendant's Emergency Motion for Protective Order* (ECF No. 444). The parties had previously agreed that Plaintiffs' expert will inspect the following facilities on September 27, 28, and 29, 2021 respectively: Northern Regional Jail; North Central Regional Jail; and Western Regional Jail. However, due to a recent surge of Covid cases, infecting both inmates and staff at all three facilities, Defendant seeks postponement of the inspections to a later date when all parties can safely access these jails.

Plaintiffs oppose any further delay of these inspections, asserting that their expert, Dr. Homer Venters, has performed numerous inspections and has taken reasonable precautions to ensure his safety, including wearing the appropriate Personal Protective Equipment (PPE). Plaintiffs further emphasize that the current outbreaks present an important opportunity for Dr. Venters because the inspections are relevant to Plaintiffs claims. Additionally, Plaintiffs point out that only Dr. Venters and one designated attorney will be present for all three facility inspections, further reducing the risk of unnecessary exposure, as well as overburdening Defendant's jail staff.

The Court notes that there are no easy solutions to the unprecedented situation the parties


find themselves, but recognizes that the inspections were already agreed upon, and there are no guarantees or even estimates as to when the numbers of infections will decrease. Further, it is noted that given the concerns over the security issues that may arise in the event of medical emergencies, the parties have already addressed same in their previous agreement concerning the inspection protocol. The Court also notes that although the North Central Regional Jail has higher rates of Covid infections, Plaintiffs are amenable to inspecting this facility on the third day, September 29, or even inspecting the South Central Regional Jail instead, should the numbers of infected inmates and staff render any inspection at North Central unworkable. The undersigned appreciates Defendant's concern that the number of Covid cases at South Central is unknown as of this time, and that it can change by next week, however, Defendant agreed to investigate this and to confer with Plaintiffs ahead of time should a change of facility inspection become necessary.

Therefore, the Court **FINDS** that given the reasonable accommodations and adjustments to the inspection schedule presented by Plaintiffs, particularly in light of the fact that the current surge of Covid infections in West Virginia and the unknown time frame as to when those numbers will decrease anytime in the immediate future, Defendant's **Motion** is hereby **DENIED** (ECF No. 444).

The Clerk is requested to distribute a copy of this Order to all counsel of record.

ENTER: September 24, 2021.




Omar J. Aboulhosn
United States Magistrate Judge